

Reverse Charge and Partial Reverse Charge POT and Abatement under Service Tax

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Reverse Charge – Liability to Pay Service Tax

Notification No. 30/2012-ST
duly amended by Notification No. 10/2014-ST
Dtd. 11 -7-2014, Read with Rule 2(1)(d) of the STR
1994

Reverse Charge Services

Description of a Service	Service Provider	Service Receiver	% of ST by SP	% of ST by SR
<u>Services of an insurance agent</u> to any person carrying on insurance business	Insurance agent	Any Person carrying on insurance business	Nil	100
<u>Services of GTA in respect of transportation of goods by road</u>	Goods Transport Agency - Issues consignment Note	Specified Person liable to pay freight either by himself or through his Agent - Factory, Society, Dealer (CE), Partnership Firm, AOP, Body Corporate	Nil	100

Reverse Charge Services

Description of a Service	Service Provider	Service Receiver	% of ST by SP	% of ST by SR
<u>Sponsorship services by way of sponsorship</u>	Any person	Body corporate or Partnership firm located in Taxable Territory	Nil	100
<u>Services of Arbitral Tribunal</u>	Arbitral Tribunal	Business Entity having Turnover > Rs. 10L Preceding FA, located in Taxable Territory	Nil	100

Reverse Charge Services

Description of a Service	Service Provider	Service Receiver	% of ST by SP	% of ST by SR
<u>Legal Services of Advocate or Firm of Advocates</u>	Individual advocate or Firm of Advocate	Business entity having Turnover > Rs. 10L Preceding FA, located in Taxable Territory	Nil	100
<u>Support Service by Government or local authority</u> excluding renting of immovable properties, postal, port, airport, and railway Services	Government or Local Authority	Business entity located in Taxable Territory	Nil	100

Reverse Charge Services

Description of a Service	Service Provider	Service Receiver	% of ST by SP	% of ST by SR
<u>Service received from Non-Taxable Territory to Taxable Territory (Import of Services)</u>	Any person located in Non - Taxable Territory	Any person located in Taxable Territory	Nil	100
Services of Director To Company or Body Corporate (w.e.f: 7-8-2012/ 11-7-2014)	Director (Not under employment)	Company/ Body Corporate	Nil	100

New Inclusion in Reverse Charge

- **W.e.f: 11-7-2014:**
- Service provided or agreed to be provided by a Director of a Company or body corporate to the said company or the body corporate, Service receiver, who is a body corporate/ Company, will be the person liable to pay Service tax
- Services provided by Recovery Agents to Banks, Financial Institutions and NBFCs has also been brought under the Reverse Charge Mechanism.

Meaning of Body Corporate

Body Corporate - U/S 2(7) of Companies Act, 1956

- A Company incorporated outside India but does not include:
 - a) Corporation sole
 - b) Registered Co-operative Society;
 - c) Any other body corporate which CG notify in OG
(Except a Company as defined in the Act)

REVERSE CHARGE - PARTIAL

Partial Reverse Charge

Sl. No.	Description of Service	Service Recipient (Business Entity as Body Corporate)	Service Provider (Individual, Firm, HUF, AOP)
7.	Renting of Motor vehicles designed to carry passenger to any person who is not in the similar line of business		
	(a)with abatement – CC not availed by SP	100%	NIL
	(b)without abatement – CC availed by SP	40%	60%
	w.e.f. 1-10-2014	(50%)	(50%)

Partial Reverse Charge

Sl. No.	Description of Service	Service Recipient (Business Entity as Body Corporate)	Service Provider (Individual, Firm, HUF, AOP)
8.	Supply of Manpower for any purpose or Security Services (w.e.f. 7-8-2012)	75%	25%
9.	Works Contract Service	50%	50%

Works Contract – Valuation

- **Challenge remains how to arrive at Material/ Service Value in Works Contract:-**
 - Actual Material/ Service portion
 - Standard Material/ Service portion
 - Composition Tax (Alternative Option)
- S. 65B(54) - **Works Contract means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;**
Labour/ Rate Contract??

Works Contract – Valuation Rules

- **Valuation under Service Tax for Works Contract Services – Rule 2AN.N 24/2012-ST dt. 6-6-2012, duly amended by Notification No. 11/2014-Service Tax Dated 11/07/2014:**

- **Rule 2A(i) Pay service tax on Actual Service portion:- Gross Consideration LESS Value of Property LESS VAT/ Sales tax, if any, ADD Value of other services;**

- **Rule 2A(ii) Pay ST at composite rate on Taxable Value**
 - Pay ST on 40% Taxable value of Original Works
 - Pay ST on 60% (W.E.F 1/10/2014 - 70%) Taxable value of all other Works contract pertaining to Immovable Properties
 - Pay ST on 70% (W.E.F 1/10/2014 - 70%) Taxable value of R&M or reconditioning or restoration or servicing of any goods

- **No CENVAT on Inputs + Include Value of FOC goods or services**

Reverse Charge – FAQ

- What does SP need to indicate on the invoice when he is liable to pay only part of the liability under the partial RCM?
- If SP is exempted being a SSI (turnover less than Rs. 10 lakhs), how will the reverse charge mechanism work?
- Whether reverse charge T/o tax on which paid by SR to be included in SP T/o for SSI
- Will the credit of such tax paid be available to the service recipient?
- Can SR request SP only to pay 100%?

Reverse Charge – FAQ

- How will the SR know which abatement / valuation option was exercised by the SP?
- Can it be presumed service consideration is inclusive of tax if service tax not separately shown in invoice.
- Company has availed accounting services & tax opinion from lawyer? Whether RCM applicable?
- Company paid fee to C.A. for representation before Tribunal - RCM?

Reverse Charge – FAQ

- Indian firm has availed services worth \$10,000 from a SP located in USA against bill dt. 30/11/2014 (exchg. rt. 61). Payment remitted on 20/12/2014 when exchg. rate was \$63. What is liability under RCM?
- Inv. Dtd. 1 August, 2014 of Rs. 10,000/- for Manpower supplied during July, 2014 (Plus Service tax of Rs.309). Payment made on 23/09/2014.
Service tax of Rs. 927/- (i.e. 75% as service recipient) was paid on 6 October, 2014. On which date CENVAT credit can be taken?
- Company has taken bus and tractor on rent from Individual SP. Is company liable to pay service tax under RCM?

Partial Reverse Charge – Refund

- In view that Certain percentage of the service tax shall be paid by the service recipient, **Service provider is unable to utilize the Cenvat Credit on inputs and input services, he shall be allowed refund of such unutilized Cenvat Credit – Rule 5B of CCR, 2004**
- Long Pending w.e.f 1-7-2012
- Notification No. 28/2012-CE (NT) Dated 20/06/2012 – Notification No. 12/2014-CE (NT) Dated 03/03/2014 Detailed procedure and conditions for seeking the **refund by the service provider of Four specified services, where service tax is to be paid on sharing basis on Partial Reverse charge**

Import of Services

No specific provision for import unlike Past regime - Taxation of Services
(Provided from Outside India and Received in India) Rules, 2006

Conditions leading to Reverse charge for imports (Point no. 10 of N.N.
30/2012-ST dated. 20-06-2012):

- Place of provision of Taxable Service is India as per POT Rules
- The said taxable service is provided or agreed to be provided by
 - any person who is located in a non-taxable territory and received by
 - any person located in the taxable territory
- Service tax to be paid by Service Recipient
- Service Receiver is liable to pay Service tax – Get registration/ File Return
- To pay in cash by GAR -7 challan as it is not output service of SR
- Take Cenvat credit provided falls within definition of Input Service

Reverse Charge

Section
65B (17)

- **“Business Entity”** means any person ordinarily carrying out any activity relating to industry, commerce or any other business

Section
65B (37)

- **“Person”** includes - Individual, HUF, Company, Society, limited liability partnership, Firm, AOP or BOI (whether incorporated or not), Government, local authority, or every artificial juridical person

Section
65B (26)

- **“Goods transport agency”**: any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called

Section
65B(31)

- **“Local authority”**: Panchayat, Municipality, Municipal Committee and District Board, Cantonment Board, Regional council, Development board.

Reverse Charge

Rule 2(cca)

- **Legal service:** Any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority

Section 65B(49)

- **Support services:** Infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis

**Point of Taxation Rules, 2011 vide
Notification No. 25/2011-ST Dated
31/03/2011, duly amended by
Notification No. 13/ 2014-Service Tax
Dated 11/07/2014**

Point of Taxation – Background

- Effective from 1st April, 2011, the Government introduced Point of Taxation Rules, 2011
- ✓ Prior to these Rules
 - Collection/ Receipt basis - Unrelated parties; and
 - Date of Book entry - Associated parties (16/5/2008)
- **POT means the Point in time when a Service shall be deemed to have been provided**
- ✓ The objective of the Rules is –
 - To appropriately define the POT in a transaction – Is it taxable event?
 - POT determine Due date of payment of Service Tax – Monthly/ Quarterly & Rate of Service Tax (1-7-2012: S. 67A)

What is POT

“Point of Taxation” or POT means the point of time when service shall be deemed to have been provided

- Deeming fiction introduced to define the POT when a service shall be “deemed to be provided”.
- Different rules for determining POT w.r.t different categories of transactions/events/persons.
- New Section 67A (w.e.f 28-5-2012) Date of determination of **Rate of tax, value of taxable service and rate of exchange:**
Rate of service tax shall be the rate applicable at the time when the taxable service has been provided or agreed to be provided

Summary Table of POT Rules

Rule 2	Definitions... some definitions modified from 01-04-2012
Rule 3	Determination of Point of Taxation as a General rule and in case of continuous supply of services
Rule 4	Determination of POT in case of change in effective Rate of tax or Portion of Taxable value
Rule 5	Determination of POT where tax is being levied on New service
Rule 6	Determination of POT in case of continuous supply of services.....OMITTED from 01-04-2012
Rule 7	Determination of POT in case of specified services MODIFIED from 01-04-2012
Rule 8	Determination of POT where service in the case of copyright, trademarks, designs or patents
Rule 8A	Determination of POT on Best Judgment Basis ... New Rule from 01-04-2012
Rule 9 & 10	Transitional Provisions

POT - General Rule 3

- **POT, the earliest of the following:**
 - Date of Receipt of Money (Advance)
 - When Invoice is issued within 30 days from Date of Completion of Service → Date of Invoice
 - When Invoice is not issued within 30 days from Date of Completion of Service → Date of Completion of Service
- **Rule 4A of STR, 1994** – Invoice to be issued within 30 or 45 days in case of banks and FIs, (14) days from the **Date of completion of service or Date of Receipt of payments** towards the value of such taxable service, *whichever is earlier*
- **Rule 4A - proviso inserted** - Invoice not required to be issued if amount received is upto Rs. 1,000 in excess of the amount indicated in the Invoice.

POT - General Rule 3 – Case Study

Sl.No	Date of Completion of Service	Date of Invoice	Date of payment Received	Point of Taxation	Remarks
1	10-04-2014	24-04-2014	20-05-2014	24-04-2014	Invoice issued within 30 days from date of receipt of payment/ date of completion of service
2	10-04-2014	18-05-2014	20-04-2014	10-04-2014	Invoice not issued within 30 days & payment received after completion of Service

POT - General Rule 3 – Case Study

Sl.No	Date of Completion of Service	Date of Invoice	Date of payment Received	Point of Taxation	Remarks
3	10-04-2014	06-05-2014	15-04-2014	15-04-2014	Invoice issued within 30 days & but payment received before invoice
4	10-04-2014	29-05-2014	5/4/2014 (Part) & balance 25/4/2014	5/4/2014 for Part & 10/4/2014 for respective amount	Invoice not issued in 30 days & Part payment before completion & remaining later.

POT – Continuous Supply

- **Rule 2(c) “Continuous supply of service”** means any service which is provided or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time; or
- Where CG, by notification prescribe particular service to be a continuous supply of service - **Telecommunication Service/ Works Contract Service** Notification No. 38/2012-ST dt. 20-6-2012 → **(Excluded Commercial or Industrial Construction, Construction of Complex, Internet telecommunication)**
- Rule 6 deleted – Rule 3 Proviso inserted **Continuous Supply of Services** → Milestone defined in Contract – Date of Completion of Service or Advance

Rule 4 – Effective Rate

- Change in Rate → Change in Effective Rate i.e. 10.3% 12.36% or Change in the portion of Value on which tax is payable
- Taxable service was provided **before change in effective Rate**:
 - Invoice issued and payment received after change of effective Rate → POT = Date of receipt of payment **or** Issue of invoice, whichever is earlier
 - Q: Service was already provided prior to change Tax on Services
 - Invoice issued prior to change but payment receipt after change in effective rate → POT = Date of issuance of invoice
 - Payment received before change in effective rate but invoice issued later → POT = Date of receipt of payment

Rule 4 – Effective Rate

- Taxable service was provided *after change in effective Rate*:
 - Invoice issued prior to Change but payment received after change in effective rate → POT = Date of payment
 - Q: Do we need to pay differential Tax
 - Invoice issued and payment received both prior to change in effective rate → POT = Date of issuing of invoice or Date of receipt of payment, whichever is earlier
 - Invoice issued after change in effective rate but payment received prior to change in effective rate → POT = Date of issuing an invoice

Rule 4 – Effective Rate

Change of Rate from 10% to 12%: 1-5-2014				
Date of Service	Date of Invoice	Date of Payment	Rate of Tax	Date on Which Liability arises
28-04-2014	09-05-2014	25-06-2014	12%	09-05-2014
	28-04-2014	25-06-2014	10%	28-04-2014
	09-05-2014	26-04-2014	10%	26-04-2014
10-05-2014	28-04-2014	25-06-2014	12%	25-06-2014
	28-04-2014	16-04-2014	10%	16-04-2014
	09-05-2014	28-04-2014	12%	09-05-2014

When New Services Taxable - POT

- **Rule 5 of POT** Rules apply to New service becomes taxable - Where a service is taxed for the first time, then,—

(a) **No tax payable** to the extent the invoice **has been issued** and the **payment received** against such invoice before such service became taxable;

(b) **No tax payable** if the **payment has been received before** the service becomes taxable and **invoice has been issued within 14 days of the date when the service is taxed for the first time.**

POT – New Services – 6th August

S. No.	Date of New Service Taxable	Date of Invoice	Date of Payment Received	Taxable/Not Taxable
1.	6 th August	18 th August	5 th August	Not Taxable
2.	6 th August	21 st August	5 th August	Taxable
3.	6 th August	5 th August	5 th August	Not Taxable
4.	6 th August	7 th August	7 th August	Taxable

Changes in POT Rules – Reverse Charge

- Rule 7 (first proviso) - POT for Reverse charge
- *Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months;*
- ~~*Earlier: Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist*~~
- Rule 10 – Transition Rule: For the invoices issued prior to 01-10-2014, the existing rule will remain applicable

Rule 7 – POT - Reverse Charge

✓ POT for Reverse Charge:

- Non-Associated Entities** – Date of payment or the *date immediately following the period of three months if payment is not made within 3 months from date of Invoice,*

- Associated entities, located outside India** – Date of Debit in the books of accounts or Date of making the payment, whichever is earlier.

Rate of Service Tax – Specified Persons

- **Prior to 01-04-2012, Rule 7 prescribed POT in case of 8 Specified Service categories including CA Service apart from Reverse charge mechanism**
- **Circular No.158/9/2012-ST,dated 08.05.2012 → clarified that in respect of 8 service providers covered by Rule 7 (prior to amendment) as well as the tax on which reverse charge is applicable,“ if the payment is received or made”, as the case may be, on or after 1st April, 2012, the service tax needs to be paid @12%**
- **Further, clarified that where invoice has been issued prior to 1st April, 2012, with rate of service tax charged @10%, then Supplementary invoice needs to be issued to recover differential tax and CENVAT Credit shall be available on such invoice**

Rate of Service Tax – Specified Persons

- **Delhi Chartered Accountants Society (Regd.) vs. UOI, {2013(29) STR 461 (Del.)}**
 - The Circular No.158/9/2012-ST, dated 08-05-2012 and Circular No.154/5/2012-ST, dated 28-03-2012 has been quashed being contrary to Finance Act, 1994 and the Point of Taxation Rules, 2011.
 - In the said judgment it was held that “the date of issuance of invoice shall be deemed to be the date on which the service was rendered and consequently, the point of taxation.”
 - In this case, the Honourable High Court held that when the service was rendered prior to 1/4/2012 and the invoices were also issued prior to that date, despite that the payment has been received after 1/4/2012, rate of tax will be 10% and not 12%

Rule 8 – POT - Copyright or IPR Services

- **Rule 8 - Royalties and payments pertaining to copyright, trademarks, designs or patent, where –**
 - the amount of consideration not ascertainable at the time when service performed
 - Subsequently use or benefit of services by a person other than the provider gives rise to any payment of consideration
- ✓ **POT would be earlier of –**
 - Payment in respect of such use or benefit is received or,
 - Invoice is issued
- ✓ **Analysis -** This rule is subject to General rule w.r.t. Continuous supply of services - Practically Rule 8 is redundant

Rule 8A – Best Judgment

- Where the point of taxation cannot be determined as per POT rules as the date of invoice or the date of payment or both are not available,
- the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

Rule 2A - To clarify Date of payment

2A. Date of payment.— “Date of payment” shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that — (A) the date of payment shall be the date of credit in the bank account when—

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and

(ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

Rule 2A – To clarify Date of Payment

- **Example 1**
 - Payment was credited in the books of accounts on 01.05.2014
 - Payment was credited in the bank account on 10.05.2014
 - Date of change in effective rate of tax is on 05.05.2014
- Date of payment shall be treated as **10.05.2014 as the actual** credit in the bank account has occurred after more than 4 working days after the change of effective rate of tax

- **Example 2**
 - Payment credited in the books of accounts on 01.05.2014
 - Payment credited in the bank account on 03.05.2014
 - Date of change in effective rate of tax is on 02.05.2014
- Date of payment shall be treated as **01.05.2014 as the actual** credit in the books of account has occurred before 4 working days from the date of change of effective rate of tax

Rule 9 – Transitional Provision

- ✓ Nothing contained in these Rules shall be applicable
 - Where the provision of service is completed; or
 - Where invoices are issued prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued up to the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is made

Thank you!

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